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Note verbale dated 21 January 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The permanent Mission of the Republic of Iraq to the United Nations Office and other International Organizations in Geneva presents its compliments to the High Commissioner for Human Rights and has the honour to enclose herewith a copy of a study titled "The embargo on Iraq in the light of the principles and rules of international law".

The Permanent Mission of the Republic of Iraq would highly appreciate it if the High Commissioner for Human Rights would have this study* circulated as a document of the Fifty-eighth session of the Commission on Human Rights under item 10 of the agenda of the session.

* Reproduced in the annex as received, in the language of submission and Arabic only.

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Annex

The principles and norms of international law

1. The sanctions regime which has been imposed on Iraq is based on Security Council resolution 661 (1990) of 6 August 1990, the resolution by which the sanctions were imposed, and two later resolutions; Security Council resolutions 665 (1990) of 25 August 1990 and 670 (1990) of 25 September 1990. By these resolutions the Security Council established an embargo against Iraq which is regarded as one of the most comprehensive regimes of compulsory sanctions. To the extent that the sanctions affect every aspect of life, this regime can be characterized as a slow and deliberate act of genocide against the Iraqi people. The imposition of the comprehensive embargo against Iraq inevitably raises the fundamental legal question of whether the Security Council is empowered to adopt sanctions resolutions such as those that have been imposed on Iraq.

2. Admittedly the Security Council does have the power under Article 41 of the Charter of the United Nations to decide what measures not involving the use of armed force are to be employed to give effect to its decisions. It may call upon the Members of the United Nations to apply such measures, which may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations. On the other hand, in its capacity as an organ of the United Nations, the Security Council is required to exercise its powers and functions set forth under the Charter in accordance with the Purposes and Principles of the Charter. Indeed, pursuant to Article 24, paragraph 2, of the Charter, in discharging its responsibilities for the maintenance of international peace and security, the Security Council is called upon to act "in accordance with the Purposes and Principles of the United Nations". The preamble of the Charter makes reference to "the peoples of the United Nations", reaffirming faith in "fundamental human rights, in the dignity and worth of the human person", the establishment of justice, the promotion of "social progress", "better standards of life in larger freedom" and the need "to employ international machinery for the promotion of the economic and social advancement of all peoples".

According to Article 1, paragraph 1, of the Charter, one of the Purposes of the United Nations is to "bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes". Under Article 1, paragraph 3, of the Charter the achievement of international cooperation is required to solve "international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all". Article 2, paragraph 3 thereof, affirms the principle that the Organization and its Members should settle their international disputes "by peaceful means in such a manner that international peace and security, and justice, are not endangered".

In addition to these provisions, Article 55 of the Charter requires the United Nations to promote:

"(a) Higher standards of living, full employment and conditions of economic and social progress and development;

"(b) Solutions of international economic, social, health and related problems, and international cultural and educational cooperation; and

"(c) Universal respect for, and observance of, human rights and fundamental freedoms for all."

It is clear from the relevant resolutions which it has adopted and the mechanisms which it has established that the Security Council has overstepped the boundaries established by the Charter for the exercise of its functions and powers. It has thereby committed a flagrant violation of the Charter as the international instrument on which it relies for the adoption of its resolutions, with tragic consequences for Iraq, the Iraqi people and all sectors. In the health sector in particular this has led to the deaths of hundreds of thousands of children and to malnutrition. In the educational sector, the embargo has brought about the collapse of the educational and cultural process, while in the social sector, it has caused an increase in juvenile delinquency, begging and anxiety about the future as well as the disintegration of family life. The very fact that the embargo has engendered these tragic consequences in itself represents a flagrant violation of the principles of justice, social progress, the safeguarding of a decent standard of living, and the right to life, which are recognized under the Charter.

3. The Security Council has violated not only the Charter, but also a number of international instruments concerned with human rights and international humanitarian law, some of which embody international peremptory norms. These instruments, which represent an extension of the true vision of equity and human rights articulated in the Charter, are, pursuant to Article 24 thereof, binding upon the Security Council.

4. Under article 3 of the Universal Declaration of Human Rights which was adopted by the United Nations General Assembly on 10 October 1948 and is part of Iraq's national law, everyone has the right to life. Article 25 of the Declaration stipulates that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, and that motherhood and childhood are entitled to special care and assistance. According to article 26 of the Declaration, everyone has the right to education. These provisions have been stripped of their meaning by the Security Council resolutions.

5. The provisions of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, which Iraq has ratified, have also been rendered meaningless by the Security Council resolutions. Under article II of the Convention genocide is defined as meaning "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

"(a) Killing members of the group;

"(b) Causing serious bodily or mental harm to members of the group;

"(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"(d) Imposing measures intended to prevent births within the group;

"(e) Forcibly transferring children of the group to another group."

The Convention characterizes genocide as a crime under international law which States have an obligation to prevent and punish.

If this definition were applied to the situation of Iraq, it could easily be said that the people of Iraq are being deliberately subjected to harsh conditions of life (particularly shortages of food and drugs) calculated to bring about its physical destruction in whole or in part. The deaths of Iraqi children are one of the tragic outcomes of these conditions.

6. According to the Declaration of the Rights of the Child which was proclaimed by the General Assembly in 1959, children are entitled to special protection and should be given the requisite opportunities and facilities to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner. The Declaration affirms the necessity of providing care to the child and his mother and that the child has the right to adequate nutrition, housing, recreation, medical services as well as an education.

7. The 1990 Convention on the Rights of the Child recognizes a set of important principles, which include the following:

(a) Every child has the inherent right to life;

(b) Every child has the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health;

(c) Every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;

(d) Every child has the right to education;

(e) Every child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or moral development.

8. Likewise, according to the International Covenant on Economic, Social and Cultural Rights which entered into force in 1976, everyone has the right to the enjoyment of the highest attainable standard of physical and mental health as well as to education.

9. According to article 54, paragraph 1, of the 1977 Additional Protocol I to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which was adopted on 12 August 1949: "Starvation of civilians as a method of warfare is prohibited". Under article 8 of the Rome Statute of the International Criminal Court, which was adopted on 17 July 1998, a war crime is an act involving, inter alia, "the intentional use of starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions of 1949". If the Protocol, in its capacity as an international instrument, prohibits the use of starvation in time of war, there is all the more reason for it to forbid it in time of peace. Yet this is precisely the type of practice which the Security Council is imposing on Iraq by virtue of resolutions which contravene article 54, paragraph 1, of the said Protocol. The following point exacerbates the gravity of this state of affairs. The 1977 Additional Protocol I, like the 1949 Geneva Conventions for the Protection of the Victims of War, is acknowledged as being part of international humanitarian law. It is therefore regarded as an international peremptory norm, the purpose of which is to protect interests that go beyond the self-interest of States. States are not allowed, for example in their reciprocal relations, to violate such norms nor is any derogation therefrom permitted, since they have a moral value which makes any derogation therefrom morally untenable, as in the case of the right to life. This principle is elucidated in article 60, paragraph 5, of the Vienna Convention on the Law of Treaties of 1969, according to which States are not entitled to invoke the breach of a treaty by another party as a ground for the termination or suspension of its operation, where such treaty contains provisions relating to the protection of the human person or is of a humanitarian character. In addition, under article 53 of the Convention, a treaty is void, if it conflicts with the peremptory norm of general international law. Since the Security Council's resolutions concerning the embargo conflict with such norms, their legitimacy can therefore be called into question. These norms are binding both on States

and on international organizations, including the United Nations and its various agencies, and may not be impaired or altered, even in the circumstances under which the Security Council is entitled to take action according to Chapter VII of the Charter.

10. The foregoing clearly shows that, by establishing the type of sanctions regime for which the relevant resolutions provide, the Security Council has not only infringed the principles and norms of the Charter of the United Nations, on which its existence, functions and powers are based, but also numerous international instruments, some embodying peremptory norms allowing of no derogation or impairment under any circumstances. This shows the lengths to which the Council has gone in flouting the principles and norms of international law, beginning with those recognized under the Charter of the United Nations. It in turn raises the very important question of whether Security Council resolutions ought to be scrutinized by the International Court of Justice in order to guarantee their conformity with the legal rules established under the Charter.